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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM 1973

No. 73-1519

CROSBY & COMPANY, INC.,

Petitioner,

against

COMPAGNIE NATIONALE AIR FRANCE,
also known as AIR FRANCE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT

REPLY MEMORANDUM

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Respondent's argument that the judgment herein "is based upon independent and adequate non-federal grounds" is insupportable for each of the three reasons indicated at pages 28-30 of the petition, to wit:

1. The contract herein with a foreign international carrier for air carriage of cargo from New York to Toulouse, France, is governed exclusively by Federal law: a treaty, Federal statutes, a permit granted by a Federal agency and rules and tariffs filed with that agency.

2. The judge who decided this case did not hold that, as a matter of construction, the provisions of the contract imposed no obligation on Air France as a carrier. He said that "Air France's only legal obligation ... was to act as a transfer agent of funds" (see Petition at p.30a) and that that was "the only obligation that could have been legally imposed" (Id. at p. 31a). At no point did the judge refer to state law or to state decisions applying state law. Thus, his conclusion of absence of "legal obligation ... [other than] to act as a transfer agent of funds ..." was shaped by, and predicated on, his misconceptual reading of the Federal decisions and the Warwas Convention which he so abundantly cited in his lengthy memorandum decision. It is clear that the

judge did not conceive himself to be applying state law on any phase of the case.

3. If, moreover, his holding be viewed as a construction of the terms of the contract on the basis of unmentioned New York authorities, it appears from the pertinent New York cases (see footnote on p. 30 of the Petition) that such a construction "is so certainly unfounded that it properly may be regarded as essentially arbitrary" (Enterprise Irrigation District v. Canal Company, 243 U.S. 157, 164, 1917, approvingly cited in Fox Film Corp. v. Muller, 296 U.S. 207, 210-11 (1935), which respondent quotes at page 6 of its brief).

In that Fox Film case, the state court held that the conceded invalidity of the arbitration clause, as a matter of state law established by the cited state court decisions, voided the entire contract. On that dispositive point, this Court deemed itself bound by that determination of applicable state law.

In Wilson v. Lowe's, Inc., 355 U.S. 597 (1958), this Court held itself bound by a state

court's determination that the complaint in that state court action was technically deficient -- surely not a matter for this Court to review.

Thus, ignoring cases cited at page 30 of the Petition, respondent has cited two cases which do not support its contention.

Respectfully submitted,

COPAL MINTZ
Counsel for Petitioner

April 25, 1974.